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## Defense Procurement and the Public Trust

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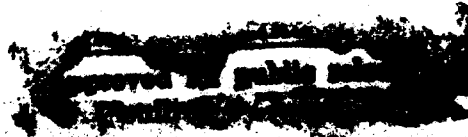
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News headlines, such as the one above, are not singularly unique to the defense department. Similar activities can be found on Wall Street, in the banking industry, and in "Corporate America." What is unique, in this particular case, is a defense procurement process which is viewed as corrupt and therefore distrusted by the American public places our national security at risk. The American public entrusts the Department of Defense (DoD) with the guardianship of our nation's safety and security. How the public perceives this guardianship is fundamental to maintaining a strong and effective defense procurement process. If public perception of defense procurement falters, the process as a whole is weakened. In recent years, news reports and opinion polls indicate the public's perceived confidence in the defense procurement has fallen. The focus of this work is to determine if this is indeed the case; and if so, to ascertain to what depth public confidence has descended and to devise a strategy which restores the public's confidence once more.

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## DEFENSE PROCUREMENT AND THE PUBLIC TRUST

### So How Bad Is The Problem?

It's important to recognize that there are different types and varying degrees of offenses within the defense procurement system. Defense procurement wrongdoing is most frequently categorized as waste, abuse, and fraud. Jacques S. Gansler, in *Affording Defense*, highlights the differences among the three. Mr. Gansler defines waste as "the inefficient and ineffective use of government money through poor management"--abuse as "unintelligent, wrong, but not illegal actions"--and fraud as "the actual performance of illegal actions."<sup>2</sup> These behaviors (and the public's perception of these behaviors) range from ineptness and inefficiency, on one hand, to outright illegal activity, on the other. Complicating the situation is a "grey" judgement area somewhere in the middle where ethical questions often arise. The media frequently compounds the situation by reporting the offenses as strictly "black and white" issues, which the public often perceives or interprets as an inept system or illegal procurement activity. The following illustrates how public perception is distorted when the media reports "black and white" procurement "abuse" statistics.

The *New York Times*, *Washington Post*, *U.S. News and World Report* and *Time* have all highlighted "extravagant" spending on numerous government purchased items: \$9,600 wrenches, \$700 pliers, \$400 hammers, \$600 toilet seats, and \$7,000 coffeepots.<sup>3</sup> The distortion arises when the public associates the perceived value of the item (the commercially available price of the item) with the price the government paid. Since the

two costs are vastly different, the public assumes the government was "ripped-off" by defense contractors eager to make enormous or illegal profits.<sup>4</sup> While these costs are by no means the result of illegal activity, the headlines do transmit a negative and damaging perception of the U.S. defense procurement process to the American public. It matters little that only a part of the story is told. These costs, while making dramatic news headlines, do not necessarily convey a clear picture--they rarely explain that the high prices frequently represent a unique government cost accounting system and a desire for rigorous military requirements.<sup>5</sup> The cost figures do not necessarily represent the actual per unit cost of an item. The impression given to the public, however, is one of a procurement process in chaos.

Is the defense procurement process really in chaos? The headlines mentioned above make it difficult to surmise otherwise. What if the procurement process was not in total chaos, but only suffering from a public perception problem? Would it still need fixing? I would argue, regardless of whether the procurement process is broken or merely suffering at the expense of news headlines and a resulting sagging public perception, something within the process is wrong and requires mending.

I believe the news headlines suggest a threat as dangerous as cancer, and a cancer left untreated can rapidly spread to vital organs resulting in a terminal condition. The public's perception of the fraud, waste, and abuse within our nation's defense procurement process is no less threatening. If the public perceives these activities as inept or illegal, the public's negative perception becomes like an unchecked cancer spreading throughout



DoD--ultimately eroding our national security with the same deadly effects.

Defense procurement and public trust are inextricably linked to our national security through the legislative process. As public trust falters, so does the willingness of the public to support and fund future defense projects. Jacques S. Gansler writes, "the taxpayers willingness to support a strong defense establishment depends, in large measure, on their perception of the effectiveness and efficiency with which the funds are spent."<sup>6</sup> This faltering trust resides not only in the general public, but also in the single branch of government charged with the responsibility of funding our nation's defense, vis-a-vis the Congress. Public will and congressional support are critical ingredients in the ebb and flow of defense procurement. One need only search back in recent history to cite the impact of national will and congressional support in achieving our goals in Vietnam and the Gulf War. In the former, the lack of public and congressional support eventually undermined the military's war prosecution efforts. In the latter, it revealed a new national pride; a willingness to commit to a costly war effort, both in terms of money and human resource.

The question of whether or not the defense procurement system is really broken, or merely suffering from the notoriety of the press, is at the heart of the issue. I believe the repercussions are manifested within the defense procurement system in two critical areas. First, the process has suffered long-term damage through diminished public confidence. A diminished confidence not only inhibits the effectiveness of the process, but is also very difficult to mend--once trust is lost, restoring it to its original level is near impossible.

Further, the procurement system has been damaged in the short-term through countless investigations--scrutinized not only internally by defense department inspectors, but also externally by the Government Accounting Office. In addition, the process has been the subject of lengthy criminal investigations by the Justice Department. These investigations not only add to program instability but also increase weapon system costs through program delays. The short and long-term effects are negative--a shaken public trust and lack of confidence in DoD's ability to produce combat and cost effective weapon systems.

There is a solution to the dilemma, and in spite of the negative press, the defense procurement process can be mended and restored as a strong and vital link to our national security. The Defense Industry Initiatives on Business Ethics and Conduct identified a fundamental cornerstone in the healing process and reported in June 1986:

"Ethical accountability, as a good-faith process, should not be affirmed behind closed doors. The defense industry is confronted with a problem of public perception--a loss of confidence in its integrity--that must be addressed publicly if the results are to be both real and credible, to the government and public alike."<sup>7</sup>

This philosophy is at the heart of my undertaking; to devise a strategy which restores public trust in the defense department's procurement process through openness and honesty. The task at hand is to bind together both DoD and industry in an enduring commitment to ethical accountability under full view of the public eye. Granted, this is by no means an easy challenge given the inherent frailty and weaknesses of human behavior. The keys to success are a motivated, professional, and quality acquisition workforce--well informed, knowledgeable, and dedicated to upholding the public's trust.

## **INTRODUCTION**

This paper explores many of the problems, concerns, and past initiatives surrounding the defense procurement process. From past failings within the procurement process, I'll chart a new course which guides the procurement system back to vitality and worthy once more of the public's confidence. My examination will focus on what I believe are the key areas concerning the defense procurement process and the public trust. First, I'll identify issues and present a brief overview of the evolution of the defense procurement process, citing historical examples of where the system has gone astray. Next, I'll profile recent initiatives in the procurement process designed to shore up sagging public confidence. Imbedded in these initiatives is a potential dilemma facing the U.S. Congress; whether or not ethics and integrity can be legislated or is better entrusted to industry's self-governance as a means of correcting the deficiencies. Third, I'll highlight and analyze the public's perceived confidence in the procurement process. Fourth, I'll appraise the internal and external influences to the procurement process. Finally, I'll present what I believe to be an innovative alternative solution for the future which guides the procurement system back into the public's trust.

## **BACKGROUND**

Just what is U.S. defense procurement? Does defense procurement differ from defense acquisition? Can it be defined as a single process? How did it get to be the world's single largest commercial endeavor? These are probably some of the more basic

and yet intriguing questions surrounding the procurement process.

Wilbur D. Jones, Jr. of the Defense Systems Management College, states that defense acquisition and defense procurement are indeed two distinct functions.

*"Defense acquisition generally applies only to weapon systems processes, procedures and end-products. Acquisition includes research, development, test and evaluation, production, procurement and operations and support. The word procurement, which is the act of buying goods and services for the government, is sometimes misidentified as being synonymous with acquisition."*<sup>8</sup>

Mr. Jones is entirely correct to include procurement as a subset of defense acquisition.

However, in examining questions of ethics, integrity, and public trust, I believe the issues cut across and permeate all functions of the acquisition process. Therefore, in discussing defense procurement, I do so with the understanding that I am referring to the larger process of defense acquisition in general.

One of the questions I raised earlier focused on the growth and size of the defense procurement process. It's difficult to imagine the current defense procurement process as ever being a fledgling industry in view of today's proportions. With annual expenditures in excess of \$170 billion, over 15 million separate contracts let per year, and employing more than 165,000 personnel, it is indeed the world's largest commercial business.<sup>9</sup> How then did the defense procurement reach its current size? Thomas L. McNaugher, in *New Weapons Old Politics* offers an excellent accounting of the evolution of defense procurement. He states the growth of the industry was linked to the inability of the military to keep pace with advancing technologies.<sup>10</sup> The military's inability to satisfy its needs were centered specifically on the rapid growth of aircraft technologies. The

military's production limitations were first recognized during World War I, when new aircraft developments and technologies often out paced production. As a result, the military increasingly turned toward the commercial sector, who not only demonstrated faster development, but also faster production capability. As the military became more and more dependent on industry for its new weapons, another growth phenomenon was also occurring. It seemed that neither industry nor the military could find a satisfactory way to deal with Congress' insistence on long-standing political requirements for access and accountability.<sup>11</sup>

One might argue then, why was America so successful in meeting the production and technology requirements during World War II and at the onset of the Cold War era? Mr. McNaugher suggests that America's success; "...was not because the political system somehow came to terms with the technical enterprise afoot but rather because wartime urgency encouraged Congress to relax traditional concerns with access and accountability."<sup>12</sup> In times of relative peace Congress quickly reverts back to its rightful role as overseer. Unfortunately, the growth of one seemed to feed the growth of the other.

As noted previously, the explosive growth of the procurement process spawned an equally dramatic increase in congressional oversight. Granted this oversight is based in constitutional legitimacy; however, when congressional oversight and the press are used for self-serving purposes, the entire system suffers. When politicians gain reelection, newspapers increase sales, and television news ratings soar at the potential expense of national security, then a system which may not be seriously broken still requires fixing.

## **DEFENSE PROCUREMENT--EVOLUTION AND ISSUES**

Before I explore the issues surrounding the present defense procurement process, it would be beneficial to outline the basic evolution of the process that exists today. As highlighted earlier, the creation of the defense procurement process was due, in part, from the military's need to rapidly satisfy a desire for ever increasing technology. The military's inability to keep up with explosive technological growth is one of the reasons the military turned to industry. The origin of the present day defense procurement process can be traced back to the early 1960's. Prior to this date, it's difficult to identify a structured acquisition process, "largely because the Secretary of Defense did not have authority to enforce such a policy."<sup>13</sup>

The National Military Establishment (the forerunner of the Department of Defense) was created by the National Security Act of 1947. This legislation created a civilian Secretary and created co-equal cabinet-level secretaries for the new Departments of the Army, Navy, and Air Force.<sup>14</sup> Although the services had a new civilian chief to monitor their activities, they remained essentially a loose confederation, intent on carving out their own maximum share of the defense budget.

The secretary's control over military acquisition was not fully centralized for a number of years. Although each of the new defense secretaries tried to exert more and more control, the services maintained individual authority over their respective acquisition programs. Not until 1958 did the Secretary of Defense gain greater control over the acquisition process. The passage of the Department of Defense Reorganization Act

enabled the Secretary, "to assign the development, production, and operational use of weapon systems to any military department or service."<sup>15</sup> This act presented a unique opportunity for the newly appointed Secretary of Defense, Robert S. McNamara.

Secretary McNamara inherited a staggering defense acquisition process wrought with inefficiencies and duplicative weapon systems. His challenge was to centralize control and eliminate wastefully redundant systems.

Since Secretary McNamara's early attempts at acquisition reform, a number of other attempts have been made to strengthen the defense procurement process. From 1960 to 1987 there were twelve major studies conducted to improve the defense acquisition process.<sup>16</sup> Although the intended purpose of the studies was to improve the overall management and effectiveness of the procurement process, they also resulted in a fundamentally different outcome than intended. I believe the studies also served to reinforce the public's negative perception of the process. Ronald J. Fox states in *The Defense Management Challenge*, that "Virtually all attempts to implement improvements have fallen short of their objectives."<sup>17</sup> The inability of the recommendations to improve the process have served to convince the public that the process as a whole is inept. Additionally, while these studies focused on improving and strengthening the acquisition process, they rarely examined the ethical behavior of individuals within the system.

The 1980's saw growing defense budgets and a resulting increase in procured weapon systems. More and more of the news media's attention became centered on the massive defense buildup. Along with dramatic defense spending, an ominous dark specter

was cast on the ethical behavior of the growing defense industry. Investigations of alleged fraud, waste, and abuse of major defense contractors increased. Examples of impropriety included general mismanagement of defense contracts, poor quality controls, falsification of timecards and test results, and exorbitantly inflated pricing.<sup>18</sup> Even as efforts were underway to improve the public's understanding and perception of defense procurement, an "Ill Wind" stormed over the process. In the summer of 1988, a two-year FBI investigation of bribery and conspiracy involving five high-level DoD officials, former officials, and 14 leading defense contractors unfolded. The scandal's details were reported daily, and exploited by representatives and senators anxious for election-year attention.<sup>19</sup> The overall impact, once again, served to reenforce the public's negative perception of the defense industry. Senators spoke of "rampant bribery," while polls showed "waste, fraud, and abuse to be a major concern to voters."<sup>20</sup> Even Vice President Bush stated he was "offended and shocked by the abuse of public trust."<sup>21</sup>

It's important to keep in mind the relative scale and proportion of the illegal activity. Although the news reports told of gross procurement system abuses, in relation to its overall size and budget, the abuses amounted to a very small proportion, "...of the 15 million annual procurement actions perhaps 1,500 involve illegalities. The same ratio of one in 10,000 is found when we look at dollars."<sup>22</sup> Then Secretary of Defense, Frank Carlucci, when informed of the FBI raids remained optimistic and "confident that we have a very solid, adequate acquisition process."<sup>23</sup> Although the relatively small ratio does not minimize the ethical considerations, "Numerous independent studies by the Congressional



Budget Office and other organizations have found DoD to be one of the best-managed of all government agencies, and is often used as a model for new procurement practices...<sup>n24</sup>

## TIME FOR FENCE MENDING

Even before the defense procurement scandals of 1988, President Reagan sought to stem the tide of fraud, waste, and abuse. President Reagan asked David Packard, the Chairman of Hewlett-Packard and a former Deputy Secretary of Defense, to head a special task force to investigate defense management. This special Blue Ribbon Commission, known as the Packard Commission, focused its attention on a number of defense management areas including the budget process, procurement, organization and operation, and legislative oversight.<sup>25</sup> The commission, in addition to recommending a number of initiatives to streamline and improve defense management, also recommended initiatives to improve the accountability of government and industry. The commission's recommendations centered on law enforcement, corporate governance, official ethics, and contractor oversight. Specifically they sought to address:

- Aggressive enforcement of federal, civil, and criminal laws governing defense acquisition.
- Defense contractors must promulgate and vigilantly enforce codes of ethics that address the unique problems and procedures incident to defense procurement.
- DoD should vigorously administer current ethics regulations for military and civilian personnel to assure compliance with the same high standards expected of industry.
- Oversight of defense contractors must be better coordinated among DoD agencies and Congress.
- Government actions should foster self-governance.
- Suspension should not be imposed solely as a result of an indictment.<sup>26</sup>

Following the news accounts of the Pentagon's procurement scandals, Congress immediately issued a call-to-arms and wasted no time in once again claiming their oversight responsibilities. Two House Committees quickly convened to study and report on the defense procurement problems. In July 1988, the House Subcommittee on Government Operations assembled specifically to discuss the defense acquisition process and the recent allegations of misconduct. At the heart of the issue was a concern that the initiatives instigated in 1981 by Secretary of Defense Carlucci, then Under Secretary of Defense, had caused a reduction in the number of oversight reviews and approvals. In essence, the relaxation of oversight had "virtually eliminated any outside review of DoD procurement activities from the Office of Management and Budget and the Office of Federal Procurement Policy."<sup>27</sup>

One of the witnesses testifying before the committee in response to the scandals was the highly respected Chairman and CEO of the Martin Marietta Corporation, Mr. Norman R. Augustine. Mr. Augustine testified that the thousands of honest, well meaning, and trust worthy defense industry workers were dealt a severe credibility blow by the recent defense scandals. Their integrity had been tarnished by a relatively small number of individuals who embarrassed the entire system through their unethical acts.<sup>28</sup> In addition to recommending improvements in the quality of the workforce, Mr. Augustine advocated the reduction of program turbulence, improvement of the requirements process, better cost estimating, and enhanced criteria for competition and source selection. Additionally, he strongly encouraged improvements in ethics awareness. This included

strengthened ethics programs with emphasis on ethics training in both government and industry..."<sup>29</sup>

In August 1988, the House Armed Service Committee (HASC) also met to investigate the *Integrity of Department Of Defense Acquisition System and Its Impact on U.S. National Security*. While the HASC also intended to survey the potential damage done by the procurement scandals, they additionally centered on the issue of industry's self-governance and ethics. Mr. Gary Edwards, Executive Director, Ethics Resource Center, defines self-governance as a concept which "recognizes that organizations have a responsibility to govern their own affairs in a manner which merits the public trust and confidence placed in them."<sup>30</sup> The goals of self-governance are indeed lofty, but can industry participants be entrusted to maintain the required high standards of conduct? In Congress's mind, the question seems analogous to letting a fox guard the chicken house. At least in the case of the fox, one can be sure of its behavior and outcome. I don't believe the concept of self-governance can exist in a system void of checks and balances. For self-governance to succeed, there must be mutual trust. There must also be limited government supervision to satisfy the oversight requirements of Congress, the media, and the concerns of the public.

The key to success resides in a joint partnership between government and industry; a partnership that first recognizes that self-governance is not a replacement for government supervision. Industry is therefore obligated to adhere to a very strict set of conduct codes and ethical accountability. The standards adhered to by industry must be

beyond reproach in the eyes of both Congress and the public. This presents an interesting dilemma. Since the contractual relationship between government and industry is secured with public funds, there is a natural tendency to over manage and supervise industry's behavior through regulations. As a result, industry seeks security and protection through existing regulations and tends to let ethical behavior fend for itself. As the regulatory role of the defense department has grown, self-governance within industry has atrophied and the moral force of principle and conscience has been overpowered by adversarialism and gamesmanship.<sup>31</sup>

The dilemma facing Congress on the issue of self-governance is whether or not ethics and integrity can be legislated or is better entrusted to industry's self-governance. One of the significant problems identified by the Packard Commission within the acquisition process was the need to recodify all federal laws governing procurement into a single, greatly simplified statute applicable government-wide.<sup>32</sup> The commission's recommendation sought to establish a means whereby Congress was actively involved in helping DoD streamline the statutes governing procurement. Why then did the procurement process appear to fail so miserably as the procurement scandal in the summer of 1988 came to national attention? I believe the bureaucratic process shares a large measure of the fault. The recommendations of the Packard Commission barely had time to work. Industry's ethics training programs and worker awareness just didn't get up to speed quickly enough to be effective. Even the recommendation proposed to enhance DoD's acquisition effectiveness are just now starting to come on line.

What then should Congress' role be in trying to solve the problem? Should Congress attempt to enforce ethical behavior through increased legislation? This tact appears to run counter to the Packard Commission's recommendation of streamlining the regulatory process. Additionally, one might argue that the success of previous legislation in enhancing ethics and integrity within acquisition was limited in light of the 1988 procurement scandals. One of the difficulties in using legislation to solve the problems of ethical behavior is the target population. I have already stated the illegal actions within the acquisition process were the result of a relative few individuals compared to the total workforce population.

Seeking to control the attitudes and behavior of a few wrongdoers through increased legislation, in fact, directs the corrective action at the total acquisition population. As a result, the entire process and the vast majority of ethical workers are encumbered by increasingly restrictive regulations. I don't believe the legislative approach is the correct solution to the problem. Not only is the procurement process further restricted by increased regulations, but the acquisition workforce is made to suffer for the ill deeds of a few. The focus instead should be on culling out the relatively few individuals who abuse the system and the public's trust. After these few are eliminated, attention should be focused on strengthening ethical awareness. The American public is split on whether or not industry can be entrusted to self-governance, but highly favor giving it a try. "Eight in ten Americans say contractors should feel an obligation to use higher ethical standards when doing business with the Defense Department."<sup>33</sup>

## PERCEIVED CONFIDENCE

Ernst and Young reported their findings, in a survey completed in October 1989, on key issues influencing the U.S. defense industry in the 1990's. Their survey sought the inputs of key industry executives, senior DoD personnel, Congressional representatives, and defense-related independent opinion leaders.<sup>34</sup> The survey identified the forecasted impact of industry scandals and the results indicated that "participants agreed that these scandals will further erode public confidence in the defense industry."<sup>35</sup> Figure 1.

highlights "at least 85 percent of each of the respondent groups felt that scandals will continue to erode the public's confidence in the industry's integrity."<sup>36</sup>

Additionally, one of the key areas assessed by the Packard Commission also centered on the public's confidence in the procurement process. The commission's survey revealed that "on the average, most Americans believe that almost half the U.S. defense budget is lost to waste and fraud; more than was lost to waste and fraud in

military spending 10-20 years ago..."<sup>37</sup> How accurate is this perception and does it represent a downward spiraling trend of the public's confidence in the procurement process? The answer to both questions, according to the surveys, is a resounding yes.

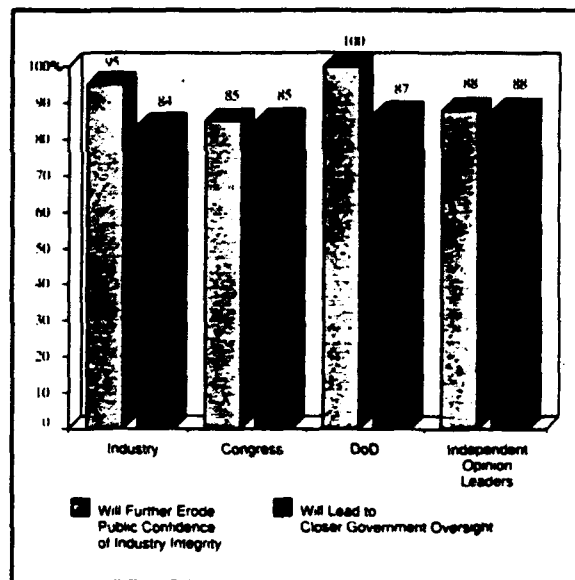


Figure 1: Industry Scandals

The Packard Commission conducted an exhaustive study of several key areas concerning public opinion on the defense management issues. The perceived public opinion of the military, defense industry performance, and the seriousness of waste and abuse, will be the focus of attention in the following paragraphs.

### **Effectiveness and Performance of the U.S. Military:**

Factoring in the military's performance during the recent Gulf Crisis, American public opinion of the U.S. Military is at its highest point since the Vietnam War. A vast majority of the American public believe strongly that a credible military force is required to maintain America's national security. When asked to compare confidence in the military to other U.S. institutions, public opinion was overwhelmingly in favor of the U.S. military. Over half of all Americans (57%) have a great deal of confidence in the U.S. military compared to the federal government, major companies, and Congress.<sup>38</sup>

Although the American public is favorably impressed by the military's ability to provide for our nation's security, they are frequently misinformed on how much of the federal budget goes to defense. On the average, the public thinks that 46% of the federal budget goes toward defense spending.<sup>39</sup> The American public also believes the military does a relatively poor job at spending its money. The basic cause is linked to the belief that purchased military hardware is both overpriced and frequently wrought with deficiencies.

### **Defense Industry's Performance:**

America's faith in our nation's defense contractors reveals a picture drastically

different from their view of the military. The nation's defense contractors are viewed as especially guilty in exploiting the procurement system. The rising tide of scandal investigations is of special concern. During the mid-1980's, procurement fraud investigations climbed at an alarming rate growing from 925 cases in 1984, to almost 1,600 in 1986.<sup>40</sup> When the American public was asked about the behavior of defense contractors, the most frequently cited example of wrongdoing was fraud: overpricing, overcharging, price increases, kickbacks, payoffs, and bribes.<sup>41</sup> Defense contractors are singled out as the individuals receiving the most benefit and money from fraud and waste.<sup>42</sup>

#### **Seriousness and Causes of Waste and Fraud in Defense Spending:**

Americans believe that the waste and abuse of public funds is a very serious problem which ranks a close second to the concerns expressed about our budget deficit.<sup>43</sup> Most Americans believe that at least 50% of the defense budget is lost to waste and fraud and that fraud accounts for as much loss in defense money as waste.<sup>44</sup> The waste and abuse of public funds within the defense procurement system carries another potential risk. Not only are there monetary concerns, but there are national security implications to consider. Some information leaked to U.S. contractors provide "insider type information" on some of our nation's most classified programs--so called black programs.<sup>45</sup> Information leaked to give a contractor a particular advantage in the contract bidding process is not uncommon. A high ranking investigator looking into the 1988 Pentagon Scandal stated, "While not claiming that all transactions are fraudulent, he insisted that



*there hasn't been a significant contract let in the past six or eight years that hasn't been made on the basis of inside information.*"<sup>46</sup> The national security ramifications of this type of crime far exceeds the damage caused by loss of public trust--the damage caused through the selling of national secrets belies a much greater direct threat to national security.

Who and what does the public view as causing the greatest waste and fraud within the defense procurement system? Clearly again, defense contractors top the list, "Americans think that defense contractors, incompetent management, and fraud and dishonesty are the major causes of waste in U.S. defense spending."<sup>47</sup> Although the defense department and Congress share some responsibility for mismanagement and bureaucratic inertia, the vast majority of the blame goes to the perceived greed and dishonesty of defense contractors.

### **INFLUENCES--INTERNAL AND EXTERNAL**

One might understandably argue that if extensive presidential, congressional, and public concern was directed toward industry's unethical behavior throughout the 1980's, why then did the procurement system erupt in a maelstrom of illegal activity in the summer of 1988? As mentioned earlier, the inherent frailty and weakness of human behavior will certainly cause a few "bad apples" in every barrel. This is not an excuse for unethical behavior, but more a commentary on human behavior in general. It would be very convenient to cast the blame for illegal activities on these few misguided individuals.

I believe, the real underlying cause of the problem resides in the attitudes and ethical awareness of the individuals involved in the defense procurement process. The powers exerting influence on the defense procurement process which contribute to fraud, waste, and abuse can be divided into two broad categories: internal and external factors.

#### **Internal Factors:**

The procurement process as a whole must assume a share of the blame in several key areas. The Packard Commission's recommendations were an excellent beginning to correcting many of the deficiencies within the procurement system. Why then did they fail to prevent the "Ill Wind" scandal in 1988? Ronald J. Fox cites two fundamental reasons why the defense management recommendations were unable to correct the deficiencies within the system. First, was a lack of continuity--once corrective activity got underway it flourished for a while and then the sponsoring military and civilian officials left the Pentagon. Second, was the desire to look for a quick fix to make the symptoms go away.<sup>48</sup>

In the case of the Packard Commission, their recommendations were forced to overcome the entrenched bureaucratic inertia within the system. Success hinged not only upon DoD's acceptance of Packard's recommendations, but also required aggressive implementation--neither happened. Additionally, the recommendations required integration into thousands of existing pages of Federal Acquisition Regulations--a complicated and time-consuming procedure at best. Another factor working against implementation was the turmoil and uncertainty caused by the numerous changes in DoD

leadership. During the mid-to-late-1980's there were no less than three new Secretaries of Defense and two new Under Secretaries of Defense (Acquisition). Along similar lines to the turmoil caused by senior DoD leadership changes; the frequent turnover in military acquisition personnel also caused problems. The instability of key acquisition personnel acted as a further barrier to implementation. Ernst and Young cite four key reasons why the Packard Commission recommendations were not fully implemented:

- A majority of respondents agreed that DoD resistance is key to lack of implementation.
- *Turf* and political issues within the system worked against implementation. This included lack of support from the Secretary of Defense and the White House.
- Some believed the Packard Commission report would generate more bureaucracy, thus working against implementation.
- Congressional resistance to change also affected implementation.<sup>49</sup>

Other internal factors contributed to waste and inefficiency within the defense procurement process. Jacques S. Gansler identifies the following factors as also contributing to wasteful spending: limited or closed production lines, custom-made items, low-quantity buys, government accounting procedures, multiple layers of order processing, and poor judgment by government buyers.<sup>50</sup> As these factors work from within the system to cause inefficiencies, external factors are exerting force as well.

#### **External Factors:**

As we have seen, the 1980's ushered in an unprecedented rise in peace-time defense spending. As quickly as the tide of defense spending rose, it swiftly receded with the evaporation of the cold war and the Communist threat in the late 1980's. As defense

dollars became scarce, competition among defense industry contractors for their share of the remaining defense money increased to near frenzy. The defense spending reduction often forced defense contractors into difficult decisions; some ethical and some that potentially held a company's future in the balance.

The relationship between government and industry, a unique arrangement, is drastically different from the buyer-seller arrangement of the commercial marketplace. In the commercial sector the exchange of goods and money is on a free-market competitive basis (demand for the highest quality goods at the lowest price possible). Additionally, the market contains many buyers and sellers. Ronald J. Fox points out in *The Defense Management Challenge*:

"In the defense acquisition process, the classical concepts of the industrial firm do not apply: price is usually not an overriding factor; product and quality are determined, not by the management of the firm, but by government authority; and competition normally focuses on proposed design rather than the physical product, and on promise of performance rather than the performance itself. The supplier often holds a monopoly and the purchaser holds a monopsony (i.e., one buyer only)."<sup>51</sup>

This arrangement presents some severe difficulties for both government and industry in conducting business transactions.

In defense acquisition two general methods are normally used to procure goods and services: competitive bidding (sealed bids) and competitive proposals.<sup>52</sup> Each of these procurement methods are susceptible to illegal activity. In competitive bidding the lowest responsive bid is usually selected. Bribery of contracting officials (the individuals who have decision authority for awarding defense contracts) in the form of flat payments or

kickbacks tops the list as a means of circumventing the system. Gifts, entertainment fees, and past and/or present gratuities such as country club memberships can be offered to secure contracts.<sup>53</sup>

In the competitive proposal process the best information, sometimes "insider type information," is often the determining factor in who is awarded the contract. The more information a contractor has on a particular new development, the more competitive he is in submitting a proposal. How is the information obtained? Much of the up-to-date critical information is held by military personnel performing duties in acquisition specialties and in the requirements divisions of the services. Industry often solicits individuals, with current program knowledge, (Revolving Door Policy) to work for a company both prior to and after retirement. Many former government acquisition personnel are legitimately employed by defense contractors, hired to work on programs where no conflict of interest exists or to provide a legitimate consulting service. Recent legislation does prevent an individual from working directly for a contractor on a program for which he or she had "official responsibility" for a period of two years.<sup>54</sup> The competitive proposal process leaves industry in search of fresh, up-to-date information--obtained by those willing to pay the highest price.<sup>55</sup> The difficulty and potential ethical dilemma of this situation is the possibility of either intentionally or unintentionally barring former government acquisition personnel from working for contractor.

Obviously, the system has inherent weaknesses exerting influences both internally and externally. Can these inherent weaknesses be overcome? Can a strategy be designed

which limits their influence? The approach can take one of two courses: we can either change the way the system operates, or change the attitudes of the people within the system. I believe the recent initiatives to correct the deficiencies have focused too strongly on the former and not forcefully enough on the latter. The changes required to restore public confidence in the defense procurement process cannot be legislated or inspected into effectiveness--*A New Approach* is needed.

### A NEW APPROACH

*A New Approach* does not necessarily require the total restructure of the existing process. I believe only a small portion of the procurement system requires mending. The recommendations of the Packard Commission are on the right track and given time and motivated implementation, will contribute greatly to improving the structure of the defense acquisition system. The areas requiring greater attention are the attitude and ethical behavior of the people within the system. I believe the approach required to restore public trust must be aimed at the attitudes of individuals in both industry and government. The attitudes to which I speak are the moral choices we ask the individuals to make within the context and pressures of a multi-polarized system. Ethics in its simplest form is the moral choice people make in their relationship with others. Laws and regulations provide the frame work and boundaries for moral choice, but do not necessarily provide the intelligence nor the knowledge to help individuals decide right from wrong. The action required to restore public confidence in the defense procurement process is centered

on a motivated, professional, and quality acquisition workforce; well informed and knowledgeable of their responsibilities. Industry and government must share in an enduring commitment to provide ethics training and awareness. This cannot be a one-time paperwork exercise nor a rubber stamp approach. The commitment must be lasting; consisting of both initial and refresher training programs, acting as an ethical beacon guiding the way.

Karen D. Sorber and Harry M. Tayloe have written an outstanding primer for *Developing Ethics Programs*. They identify four key elements, which I believe are essential ingredients to a strong and effective ethics program. The key elements are: a code, communications, training, and monitoring.<sup>56</sup> Although this primer was written and geared toward industry, it also provides an exceptional framework for government as well. It's important here to highlight that government has been active in developing ethical awareness within the newly evolving professional acquisition corps. DoD 5000.52-M, Appendix H, *Personal Integrity - Public Trust*, lays the seeds of ethical awareness and responsibility for government acquisition personnel. I propose *A New Approach* that blends the philosophies of each of these approaches to create a combined standard that both industry and government can adhere to.

This standard embodies a commitment to the nation from its acquisition workers, a commitment to preserve integrity, honesty, and fairness.<sup>57</sup> The road to restoring public confidence starts with a pledge by defense procurement participants to uphold the highest standards of ethical conduct. Whether this conduct is pledged as a company creed or an

individual oath is of little consequence--what is important, is that the participants recognize a responsibility to uphold the public's trust. The visibility of this pledge must serve as a constant reminder of individual responsibility. Not only should this pledge be in constant view, but it should also be emblazoned as part of government's and industry's logos and incorporated into all correspondence.

How can ethical issues be better communicated? I believe the past initiatives have encouraged only downward directed information--often in the form of legislation and regulatory guidance. This process must be revitalized, fostering and encouraging two-way communication. Ethical expectations must not only be clearly spelled out, but must be put forward in an atmosphere which is receptive to questions, concerns, and reports of problems. Illegal activity, when discovered by defense procurement personnel, must be freely reported and without fear of retribution. This philosophy enables government and industry to improve upon the concept of self-governance. The less difficult it is to report suspected illegal activity, the more at ease people will be in coming forward. **The key to improving individual ethical awareness is *education*.**

Education provides the bridge to success. As highlighted earlier, we expect acquisition personnel to adhere to a creed and code of conduct that is higher than the average standard. Education motivates, makes the corps more professional, and ensures a quality acquisition workforce. This translates into a training program which provides an initial understanding and is supplemented by recurring information to keep ethical issues fresh and visible to the acquisition workforce. Finally, there must be a mechanism which



periodically validates the health and vitality of the program.

I believe defense procurement owes the public a measure of ethical accountability. As a pledge of good-faith, the defense procurement process must be open and ready for scrutiny from the public, media, and Congress. External mechanisms are in place and have been effective in reporting misconduct. The concept of self-governance, however, recognizes a need for organizations to internally identify wrongdoing. In my estimation, internal policing is part of the communication process that encourages and fosters reporting of violations without fear of recrimination.

Previous attempts to correct procurement process deficiencies through statutes and regulations have only addressed the symptoms of the problem. I believe *A New Approach* must be founded on **ethics education--programs which work toward changing the attitudes of the individuals involved in the process.** For the defense industry to change public perception, it must first reestablish confidence in its integrity--integrity measured through performance, embodied by quality, excellence, cost effectiveness, and consistent ethical behavior. Integrity must be addressed publicly and in full view of the public eye if the results are to be both real and credible. This is the roadmap which, I believe, is instrumental in restoring public confidence in the defense procurement process.

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